

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

WRIT PETITION NO.2143 OF 1993

Messrs. Paras Chemicals, a firm
registered under Indian Partnership
Act, 1932 and having its office at
E-3, 4th floor, Ashokraj, S.V.Road,
Goregaon, Bombay 400 062.

Petitioners

vs.

1. The Union of India,
2. The Collector of Central Excise,
Bonmbay-1, Collectorate Central
Excise Building, Maharashi Karve
Road, Bombay 400 020.
3. The Assistant Collector of
Central Excise, Division K-I,
Old Custom House, Fort,
Bombay 400 023.
4. The Superintendent of Central
Excise, Range VIII, Division K-1
having his office at Mahavir
Jain Vidyalaya, Dr.Barfiwala
Marg, Andheri (W),Bombay 400 058.
5. The Commissioner, Provident Fund,
Bhavishya Nidhi Bhavan,
Opp. Kalanagar, Bandra (East),
Bombay 400 051.
6. The Collector of Bombay and
Bombay Suburban District having
his office at Old Custom House,
Bombay 400 023;
7. The State of Maharashtra
8. M/s.Aryan Motors, a partnership
firm having its office at Aryan
Bhavan, Central Road, Street No.8,
Plot No.34, M.I.D.C.Andheri(East),
Bombay 400 093.

Respondents

Mr. Anoop Sharma i/b. Mr. S.M. Kazi for the petitioners.

Mr. P.S. Jetley with Ms. S.V. Bharucha for the respondents
1 to 4.

Mr. P.G. Sawant, A.G.P. for the respondents 6 and 7.

**CORAM : R. M. LODHA &
J. P. DEVADHAR, JJ.**

DATED : 28th April, 2006

ORAL JUDGMENT (Per R.M. Lodha, J.)

The action of the Superintendent of Central Excise, Range VIII (respondent no.4) in ordering detention vide order dated 18th May, 1989 of motor chasis owned by the petitioners under Rule 230 of Central Excise Rules, 1944 is an issue in this writ petition.

2. The petitioners purchased the chasis No.DHO-06224 Engine No.DHO6224 being Jeep of Mahindra & Mahindra on 14th June, 1985. In the year 1988, the petitioner delivered the said vehicle to M/s. Aryan Motors (respondent no.8) for building and mounting metal body on chasis with N.S. structure, M.S. Penelling from outside, inside top with off white rexine, thermocol insulation on roof 1/8" thick plywood covered with rexine from inside, 4 door on side and one door at rear standard type upholstery, plain toughened glasses for windows, Ambassador lock for doors, painted with ICI Duco Paint (non metallic). The price for the said work was fixed at Rs.35,000/-

3. Though the petitioners call the said works as repairs, the work that was given to respondent no.8 is clearly building and mounting metal body with the specifications as set out above. The respondent no.8 did not pay excise duty in respect of the excisable goods, materials and preparations made by it in building the metallic body on petitioners vehicle. As a result thereof, the said vehicle was detained by the respondent no.4 under Rule 230 of the Central Excise Rules, 1944.

4. The contention of the petitioners is that the petitioners have already paid excise duty while purchasing the said vehicle and, therefore, on the repairs done by the respondent no.8 in the vehicle of the petitioners, excise duty was not payable and rule 230 of Central Excise Rules, 1944 is not attracted.

5. Rule 230 reads thus:

"230.(1) When the duty leviable on any goods is owing from or by any person carrying on trade or business, whether as a producer, manufacturer or as dealer in such goods, all excisable goods, and all materials and preparations, from which any such goods are made, and all plant, machinery, vessels, utensils, implements and articles for making or manufacturing or producing any such goods, or preparing any materials, or by which the trade or business is carried on, in the custody or possession of the person carrying on such trade or business, or in the custody or possession of any agent or other person in

trust for or for the use of the person carrying on such trade or business, may be detained for the purpose of exacting such duty; and any officer duly authorised by general or special order of the Central Board of Excise and Customs or the Commissioner may of detain such goods, material, preparations, plant, machinery, vessels, utensils and articles until such duties or any sums recoverable in lieu thereof are paid or recovered.

(2) Where any such person transfers or otherwise disposes of his business in whole or in part, or effects any change in the ownership thereof, in consequence of which he is succeeded in the business or trade or part thereof by any other person or persons, all excisable goods, materials, preparations, plant, machinery, vessels, utensils, implements and articles in the custody or possession of the person or persons succeeding may also be detained for the purpose of exacting duty due from the producer, manufacturer or dealer upto the time of such transfer, disposal or change, whether such duty has been assessed before such transfer, disposal or change, but has remained unpaid, or is assessed thereafter."

6. It would be seen from rule 230 that it empowers an authorised officer to detain all excisable goods and all materials and preparations from which any such goods are made and all plant, machinery, vessels, utensils, implements and articles for making or manufacturing or producing any such goods, or preparing any materials, or by which the trade or business is carried on in the custody or possession of the person carrying on such trade or business not paying accepting central excise duty. The language empowered in rule 230 is quite comprehensive. In our view, the work of building and

mounting the metallic body on the petitioners vehicle is covered in the category of any 'such goods' under the provisions of Rule 230.

7. The order of detention does not suffer from any error of law, competence or power.

8. Vide interim order dated 9th November, 1993, the vehicle was ordered to be released on petitioners furnishing a Bank Guarantee in the sum of Rs.15,000/-. We are informed that the petitioners in lieu of Bank Guarantee deposited the sum of Rs.15,000/- before this Court. The revenue (respondents 2 to 4) are now entitled to withdraw the said amount with interest accrued thereon.

9. Writ Petition is, therefore, liable to be dismissed and is dismissed with no order as to costs.

(R.M. LODHA,J.)

(J.P. DEVADHAR,J.)